

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
www.dir.ca.gov/oshsb



Attachment No. 2

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Chapter 4, Subchapter 7, Article 14, Section 3469
of the General Industry Safety Orders

Powered Industrial Truck Training for Marine Terminal Operations**SUMMARY**

On December 1, 1998, the United States Department of Labor, Occupational Safety and Health Administration (fed OSHA), promulgated its Powered Industrial Truck Operator (PITO) standard as 29 CFR 1910.178(l) [63 Fed Reg. 66238]. The federal PITO standard is made applicable to marine terminals by 29 CFR 1917(a)(2)(xiv). The Title 8 counterpart to 29 CFR 1917(a)(2)(xiv) is contained in GISO Section 3469 Industrial Trucks, which references Article 25 Industrial Trucks, Tractors, Haulage Vehicles, and Earthmoving Equipment. Article 25 contains Section 3668, which is California's PITO standard and is essentially verbatim of the federal 29 CFR 1910.178(l).

Following the promulgation of the final PITO rule by fed OSHA, the National Maritime Safety Association filed a lawsuit against fed OSHA over certain provisions of the federal PITO standard. The National Maritime Safety Association stated that the unique nature of marine terminal operations rendered portions of 29 CFR 1910.178(l) unacceptable. On July 14, 2000, a settlement agreement was reached between fed OSHA and the National Maritime Safety Association, which addresses the application of 29 CFR 1910.178(l) to the longshoring and marine terminal industries with regard to compliance deadlines, training, evaluation and certification of training/refresher training by a third party, three-year evaluations and certification records, avoidance of duplicative training of experienced operators, refresher training and evaluation, and generic training including seatbelt training. The settlement agreement (agreement) stipulated that fed OSHA would provide the agreement to state plan occupational safety and health agencies and encourage the states to follow it.

This rulemaking represents California's method of incorporating terms of the agreement into Title 8, Marine Terminal regulations. The proposal consists of an incorporation by reference of fed OSHA's CPL 2-1.28A on August 11, 2000 as revised by CPL 2-1.28A on November 30, 2000. The federal CPL document is designed to provide technical guidance to enforcement personnel with regard to the federal PITO training requirements and the marine terminal/longshoring industries. CPL 2-1.28A, Section X, paragraphs A-G, embodies all the

provisions of the settlement agreement verbatim. The settlement agreement is intended to provide marine terminal/longshoring employers with technical guidance as to how they can comply with specific federal PITO requirements. The federal CPL document references those portions of the federal PITO standard that marine terminal/longshoring employers may alternatively comply with.

This rulemaking proposal incorporates by reference the agreement in proposed new subsection (b). A "Note" is also provided at the end of subsection (b) to clarify to the employer and enforcement personnel the Title 8 Section 3668 PITO regulations that correspond to the federal PITO provisions contained in Section X, paragraphs A-G, of the federal CPL.

It should also be noted that this rulemaking proposal was discussed with representatives from the Division of Occupational Safety and Health, the Pacific Maritime Association (PMA), Mr. Baruch A. Fellner, Esq., Gibson, Dunn and Crutcher, LLP (representing PMA), and Mr. Richard Zuckerman, Esq., Leonard Carder et al. (counsel for the International Longshore and Warehouse Union). The aforementioned parties have found the proposal to be acceptable to the extent that it "honors" the settlement agreement in California with regard to marine terminal operations and PITO training.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

This proposed rulemaking action contains nonsubstantive, grammatical revisions. These nonsubstantive revisions are not all discussed in the Informative Digest. However, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition to these nonsubstantive revisions, the following actions are proposed:

Section 3469. Industrial Trucks.

This section requires all trucks or tractors for hauling, pushing, lifting or tiering material to comply with the requirements of Article 25.

A revision is proposed to clarify the application of Section 3469 to industrial trucks or tractors, consistent with the terminology of Article 25. The proposed revision will have no effect other than to clarify to the employer the application of the requirements of Article 25 to industrial trucks or tractors used in marine terminal operations.

A new subsection (b) is proposed to address powered industrial truck operator training for marine terminals by referencing the fed OSHA Instruction CPL 2-1.28A, Enforcement Guidance for the Longshoring and Marine Terminal Industries. In addition, an informative "Note" is proposed to follow subsection (b) which contains the counterpart Title 8, Section 3668 provisions that correspond to those federal PITO regulations cited in Section X, paragraphs A-G of the federal CPL. The proposed subsection (b) and "Note" are necessary to clarify to marine terminal employers what alternative methods of compliance will be permitted consistent with the settlement agreement and the federal CPL. The proposal is necessary to ensure that marine terminal employees are effectively trained to operate industrial trucks used in marine terminal operations in a manner that will prevent serious injury.

DOCUMENTS RELIED UPON

1. Settlement Agreement between the National Maritime Safety Association, Inc. and the Occupational Safety and Health Administration, United States Department of Labor, and Alexis M. Herman, Secretary, United States Department of Labor, No. 99-1031, July 14, 2000.

This document is available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350 Sacramento, California.

DOCUMENTS INCORPORATED BY REFERENCE

1. Federal OSHA Instruction CPL 2-1.28A, Issued by the Directorate of Compliance Programs, August 11, 2000, revised by CPL 2-1.28A, November 30, 2000, Section X, Paragraphs A-G, Enforcement Guidance for the Longshoring and Marine Terminal Industries.

This document is too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the document by reference. Copies of this document are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to the attention of the Board would lessen the adverse impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulations does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these regulations do not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes

unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed regulations do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed regulations do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses.

ASSESSMENT

The adoption of the proposed amendments to these regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.